

**TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE**



**FISCAL NOTE**

**HB 169**

February 15, 2011

**SUMMARY OF BILL:** Expands the offense of first degree felony murder to include, as one of the enumerated underlying felonies, aggravated assault against a victim by a perpetrator who, after having been enjoined or restrained by an order, diversion or probation agreement of a court of competent jurisdiction from in any way causing or attempting to cause bodily injury or in any way committing or attempting to commit an assault against an individual or individuals, intentionally or knowingly attempts to cause or causes bodily injury or commits or attempts to commit an assault against the individual or individuals. The offense is punishable by death, life imprisonment without the possibility of parole, or life imprisonment.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures - \$23,100/One-Time  
\$257,700/Recurring  
\$885,700/Incarceration\***

**Other Fiscal Impact – An average of one offender per year will receive a death sentence. If a capital offender serves an average of 20 years before the sentence is carried out, there will be no significant additional incarceration costs for the capital offender, apart from the execution. The cost of executing each inmate will exceed \$15,000. The cost to the State of capital trials and appeals is substantially higher than for non-capital cases. It is estimated that the additional cost of capital trials and appeals will exceed \$750,000 for each case.**

**Assumptions:**

- According to the Tennessee Bureau of Investigation Crime in Tennessee Report, an average 82 homicide arrests each of the past three years were tied to domestic violence.
- An average 309 homicide arrests were made in the past three years. Approximately 26.5 percent (309/82) of the homicide arrests were related to domestic violence.
- According to the Administrative Office of the Courts, there has been an average of 64 convictions for violations of orders of protection. The Department of Correction (DOC) estimates 10 percent (6) of those violations fall under the proposed underlying felony offense elevating their conduct to first degree rather than second degree murder and resulting in an additional 34 years on their sentence (an increase from 17 years to 51 years).

- According to the U. S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will result in one additional offender in the tenth year after the sentence increase is added to time currently served. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on seven offenders. One of the seven offenders will receive a death sentence.
- According to DOC, 46.4 percent of offenders will re-offend within three years of their release. A recidivism discount of 46.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (7 offenders x 46.4% recidivism discount = 3 offenders).
- According to DOC, the average operating cost per offender per day for calendar year 2011 is \$60.62. The cost per offender at 17 years is \$376,404.74 (\$60.62 x 6,209.25 days). The cost per offender at 27 years (10<sup>th</sup> year) is \$597,819.29 (\$60.62 x 9,861.75 days). The additional cost of increasing the average sentence length is \$221,414.55 (\$597,819.29 - \$376,404.74). The total operating cost for 4 (7 – 3) offenders is \$885,658.20 (\$221,414.55 x 4 offenders).
- Public defenders and district attorneys general will require additional resources for trials and appeals of additional death penalty and life without parole cases. Supreme Court Rule 13 requires the appointment of two defense attorneys, with specialized training, in each capital case. Reimbursement rates for appointed defense counsel are higher in capital cases. Due to the nature of capital cases, counsel accepting or assigned such cases may be subject to greater limitations on their caseloads, requiring additional attorneys to handle other cases.
- Recurring costs of \$257,700 reflect two additional assistant public defender positions and one assistant district attorney position including \$161,100 (\$53,700 x 3) for salaries, \$74,100 (\$24,700 x 3) for benefits, and \$22,500 for travel, supplies, rent, training, and other related costs. One-time costs of \$23,100 reflect computer equipment, furniture, books, and other related costs for three positions (\$7,700 x 3).
- Tennessee has executed five offenders in the past ten years. Each execution is estimated to cost in excess of \$15,000.
- The State incurs substantial out-of-pocket expenses in death-sentence trials and appeals. These include costs of appointment attorneys, expert witnesses, investigation, and related matters. These additional costs are estimated to exceed \$750,000.

*\*Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink, appearing to read "James W. White". The signature is fluid and cursive, with the first name "James" written in a smaller, more compact script than the last name "White".

James W. White, Executive Director

/lsc